

Assessment of the EU Consumer Rights Directive (2011/83/EC) – HOTREC¹ position

The EU Consumer Rights Directive is a fundamental piece of legislation for the European hospitality industry, as it directly regulates hotel contracts concluded at distance, which are by far the largest proportion of hotel contracts (i.e. hotels contracts concluded on-premises represent only around 4.8% of all hotel bookings). For this reason, HOTREC wishes to provide to the European Commission its input on the evaluation of the EU Consumer Rights Directive, from the point of view of hotel contracts.

It is important to understand that hotel contracts have some important specificities which must be taken into consideration, when looking at the EU consumer Rights Directive:

- Hotel contracts concluded at distance can be agreed both on-line AND offline (e.g. by telephone);
- Hotel services are by nature perishable (they expire on the day of performance and cannot be resold after the date of performance).

1. Pre-contractual information requirements and formal requirements for distance contracts

As far as hotel contracts are concerned, it is important to always remember that around 20% of direct (i.e. without the use of an intermediary) hotel bookings are made by telephone. Pre-contractual information requirement and formal contractual requirements must therefore take into account that reality.

In this perspective, article 8-6 of the Consumer Rights Directive, which allows Member States to adopt additional formal requirements for contracts concluded by telephone, might be impracticable and might jeopardise their existence (e.g. Some consumers might not confirm their written consent but would expect the hotel room to be available when arriving, as they would believe that the contract was valid after the initial booking by phone. Some older hotel clients also do not always use emails and would expect everything to be concluded over the phone).

2. Exemption to the right of withdrawal for hotel contracts: crucial and beneficial for both the industry and consumers

Article 16-I of the Consumer Rights Directive provides for an exemption to the right of withdrawal for contracts on *“the provision of accommodation other than residential purpose (...) catering or services related to leisure activities if the contracts provides for a specific date or period of performance”*.

This exemption applies directly to hotel contracts (and tourism services in general). The existence of this exemption for hotel/tourism contracts is crucial for the hotel sector for two major reasons:

a) Hotel services are highly perishable – they cannot be re-sold easily on time before their expiry

By opposition to other goods or services, hotel/tourism services are of a highly perishable nature, as they expire on the date of the performance. For instance, an empty hotel room cannot be sold any more the next night. Manufacturers can build stocks, hotels cannot. Therefore, when a hotel reservation is made, it necessarily implies the setting aside of

¹ HOTREC represents the hotel, restaurant and café industry at European level. The sector counts in total around 1.8 million businesses, being 99,5% small and medium sized enterprises (91% are micro enterprises, i.e. employing less than 10 people). These businesses make up some 60% of value added. The industry provides some 10 million jobs in the EU alone. Together with the other tourism industries, the sector is the 3rd largest industry in Europe. HOTREC brings together 43 national associations representing the interest of this industry in 30 different European countries.

capacity that would be very difficult to re-fill if a right of withdrawal was to be applied. This is particularly true, for instance, in a context where the European hotel industry is suffering from over-capacity and where the average room occupancy rate throughout the year in the EU is often below 50%.

Besides, a contracted accommodation service quite often covers more than just accommodation, but also for example meals, banquets, or small additional services. In such cases, a cancellation or no-show does not only mean the loss of the room-night(s), but additional actual losses for all the services contracted.

Concrete example justifying the need for the exemption:

A small hotel receives in June a reservation for a group of consumers for several nights to take place three weeks later. Thanks to this reservation, the hotel is fully booked for the reservation period. Given this, the hoteliers refuse several bookings from other interested consumers for the same period. 12 days after the initial booking, the group cancels the hotel reservation, leaving the hotel with several empty rooms that the hotelier does not manage to re-sell in time. Without the exemption to the right of withdrawal, this would have been equivalent to a direct loss for the hotelier, given the perishable nature of the hotel service.

b) The current exemption to the right of withdrawal is a win-win situation for consumers and hoteliers

The exemption to the right of withdrawal provides for a great flexibility, which gives advantages to both the consumer and the hoteliers.

- **The absence of a regulated right of withdrawal is the reason why hotel contracts have generous/flexible cancellation policies**

The exemption allows most hotels to have generous cancellation policies (e.g. free cancellation for several weeks in case of early bookings). This would not be possible without the exemption to the right of withdrawal, as a regulated right of withdrawal would automatically modify the entire business model on which individual hotel cancellation policies are built.

- **Without the exemption to the right of withdrawal, most price promotions would drastically be restricted**

The absence of a regulated right of withdrawal also allows hotels to make important price promotions for both late bookings and early bookings. Such promotions would most likely disappear, or at the very least be drastically restricted, should the exemption be deleted.

Indeed, promotional offers, like for instance last minute or late bookings, are limited in quantity and in time. If a right of withdrawal applies, hotels will simply not be able to make such promotional offers for the consumer, or the consumer could possibly see a sharp decrease in the availability of such offers. Furthermore, it is impossible to manage last minute or late bookings if the consumer can withdraw from the contract until for instance the last days before the beginning of the performance of the reserved service.

Three concrete examples of win-win situations for consumers and hotels allowed by the exemption to the right of withdrawal

Example 1: generous cancellation policies for early booking

It is quite common for many hotels to have generous cancellation policies for early bookings. For instance, a consumer booking 4 months in advance in a specific hotel, could enjoy the possibility for 2 months to cancel for free its reservation. This is made possible by the fact that last-minute bookings would not entail any possibility to cancel the reservation, while bookings which are not last minute but late (i.e. booking 3 weeks before) would allow for cancellation with a financial compensation. It is precisely the flexibility given, which allows most hotels to have generous cancellation possibilities for many reservations done in advance.

Example 2: price promotions for early booking

Many hotels today offer price promotions (e.g. -10% or -15% or more) for early bookings, provided that the booking cannot be cancelled. Such promotions will co-exist with normal price offers for which the ordinary (and generous) cancellation policy applies. For the same date of hotel reservation, the consumer will therefore have the choice between a room with the normal price and the free cancellation policy or the same room with a 10% or 15% (or more) discount but no possibility to cancel. It is the flexibility given by the absence of a right of withdrawal which allows such price promotions for early bookings. This is of direct benefit to both the consumer (who has an additional choice to choose a better price) and the hotel (the price promotion leads to additional bookings, which drive up the actual occupancy rate of the hotel).

Example 3: price promotion for late booking

Many hotels regularly offer late-booking promotions. For instance, a hotel which realises that its occupancy is not good for a certain date might offer a few weeks before a specific price promotion, to the condition that the reservation is final and cannot be cancelled for free. This is a very popular option for many consumers, who often wait until quite late before booking a specific hotel, in order to benefit from these promotions. It also allows hotels to secure actual bookings without the financial risk of a cancellation the days before the reservation, which would make it impossible to re-sell the same room in time. This is a win-win situation for the consumer and the hotelier, which is allowed thanks to the exemption to the right of withdrawal provided by the Consumer Rights Directive.

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